



Sen. John J. Cullerton

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09400SB2954sam001

LRB094 19066 RLC 55868 a

1 AMENDMENT TO SENATE BILL 2954

2 AMENDMENT NO. _____. Amend Senate Bill 2954 on page 1, by
3 inserting immediately below line 3, the following:

4 "Article 1."; and

5 on page 1, line 4, by replacing "Section 1." with "Section
6 1-1."; and

7 on page 1, lines 14, 22, 23, 26, 31, 32 and on page 2, lines 4
8 and 5, by changing "Act" wherever it appears to "Article 1";
9 and

10 on page 2, line 8, by replacing "Section 5." with "Section
11 1-5."; and

12 on page 4, line 25, by replacing "Section 10." with "Section
13 1-10."; and

14 on page 10, by inserting immediately below line 20, the
15 following:

16 "Article 2.

17 Section 2-1. Findings; purpose.

18 (a) The General Assembly finds and declares that:

19 (1) Public Act 89-688, effective June 1, 1997,
20 contained provisions amending Sections 31A-1.1 and 31A-1.2

1 of the Criminal Code of 1961 relating to bringing
2 contraband into a penal institution; possessing contraband
3 in a penal institution; and unauthorized bringing of
4 contraband into a penal institution by an employee. Public
5 Act 89-688 also contained other provisions.

6 (2) On October 20, 2000, in *People v. Jerry Lee Foster*,
7 316 Ill. App. 3d 855, the Illinois Appellate Court, Fourth
8 District, ruled that Public Act 89-688 violates the single
9 subject clause of the Illinois Constitution (Article IV,
10 Section 8 (d)) and is therefore unconstitutional in its
11 entirety. The Illinois Supreme Court agreed with the
12 reasoning of that court in *People v. Burdunice*, 211 Ill. 2d
13 264 (2004).

14 (3) The provisions added to Sections 31A-1.1 and
15 31A-1.2 of the Criminal Code of 1961 by Public Act 89-688
16 are of vital concern to the people of this State. Prompt
17 legislative action concerning those provisions is
18 necessary.

19 (4) Section 31A-1.1 of the Criminal Code of 1961 has
20 subsequently been amended by Public Act 94-556. Section
21 31A-1.2 of the Criminal Code of 1961 has subsequently been
22 amended by Public Acts 90-655, 91-357, and 94-556.

23 (b) It is the purpose of this Article 2 to re-enact
24 Sections 31A-1.1 and 31A-1.2 of the Criminal Code of 1961,
25 including the provisions added by Public Act 89-688 and the
26 subsequent amendment to Section 31A-1.1 by Public Act 94-556
27 and subsequent amendments to Section 31A-1.2 by Public Acts
28 90-655, 91-357, and 94-556. This re-enactment is intended to
29 remove any question as to the validity or content of those
30 provisions; it is not intended to supersede any other Public
31 Act that amends the text of the Sections as set forth in this
32 Article 2. The re-enacted material is shown in this Article 2
33 as existing text (i.e., without underscoring).

1 Section 2-5. The Criminal Code of 1961 is amended by
2 re-enacting Sections 31A-1.1 and 31A-1.2 as follows:

3 (720 ILCS 5/31A-1.1) (from Ch. 38, par. 31A-1.1)

4 Sec. 31A-1.1. Bringing Contraband into a Penal
5 Institution; Possessing Contraband in a Penal Institution.

6 (a) A person commits the offense of bringing contraband
7 into a penal institution when he knowingly and without
8 authority of any person designated or authorized to grant such
9 authority (1) brings an item of contraband into a penal
10 institution or (2) causes another to bring an item of
11 contraband into a penal institution or (3) places an item of
12 contraband in such proximity to a penal institution as to give
13 an inmate access to the contraband.

14 (b) A person commits the offense of possessing contraband
15 in a penal institution when he possesses contraband in a penal
16 institution, regardless of the intent with which he possesses
17 it.

18 (c) For the purposes of this Section, the words and phrases
19 listed below shall be defined as follows:

20 (1) "Penal institution" means any penitentiary, State
21 farm, reformatory, prison, jail, house of correction,
22 police detention area, half-way house or other institution
23 or place for the incarceration or custody of persons under
24 sentence for offenses awaiting trial or sentence for
25 offenses, under arrest for an offense, a violation of
26 probation, a violation of parole, or a violation of
27 mandatory supervised release, or awaiting a bail setting
28 hearing or preliminary hearing; provided that where the
29 place for incarceration or custody is housed within another
30 public building this Act shall not apply to that part of
31 such building unrelated to the incarceration or custody of
32 persons.

33 (2) "Item of contraband" means any of the following:

1 (i) "Alcoholic liquor" as such term is defined in
2 Section 1-3.05 of the Liquor Control Act of 1934.

3 (ii) "Cannabis" as such term is defined in
4 subsection (a) of Section 3 of the Cannabis Control
5 Act.

6 (iii) "Controlled substance" as such term is
7 defined in the Illinois Controlled Substances Act.

8 (iii-a) "Methamphetamine" as such term is defined
9 in the Illinois Controlled Substances Act or the
10 Methamphetamine Control and Community Protection Act.

11 (iv) "Hypodermic syringe" or hypodermic needle, or
12 any instrument adapted for use of controlled
13 substances or cannabis by subcutaneous injection.

14 (v) "Weapon" means any knife, dagger, dirk, billy,
15 razor, stiletto, broken bottle, or other piece of glass
16 which could be used as a dangerous weapon. Such term
17 includes any of the devices or implements designated in
18 subsections (a)(1), (a)(3) and (a)(6) of Section 24-1
19 of this Act, or any other dangerous weapon or
20 instrument of like character.

21 (vi) "Firearm" means any device, by whatever name
22 known, which is designed to expel a projectile or
23 projectiles by the action of an explosion, expansion of
24 gas or escape of gas, including but not limited to:

25 (A) any pneumatic gun, spring gun, or B-B gun
26 which expels a single globular projectile not
27 exceeding .18 inch in diameter, or;

28 (B) any device used exclusively for signaling
29 or safety and required as recommended by the United
30 States Coast Guard or the Interstate Commerce
31 Commission; or

32 (C) any device used exclusively for the firing
33 of stud cartridges, explosive rivets or industrial
34 ammunition; or

1 (D) any device which is powered by electrical
2 charging units, such as batteries, and which fires
3 one or several barbs attached to a length of wire
4 and which, upon hitting a human, can send out
5 current capable of disrupting the person's nervous
6 system in such a manner as to render him incapable
7 of normal functioning, commonly referred to as a
8 stun gun or taser.

9 (vii) "Firearm ammunition" means any
10 self-contained cartridge or shotgun shell, by whatever
11 name known, which is designed to be used or adaptable
12 to use in a firearm, including but not limited to:

13 (A) any ammunition exclusively designed for
14 use with a device used exclusively for signaling or
15 safety and required or recommended by the United
16 States Coast Guard or the Interstate Commerce
17 Commission; or

18 (B) any ammunition designed exclusively for
19 use with a stud or rivet driver or other similar
20 industrial ammunition.

21 (viii) "Explosive" means, but is not limited to,
22 bomb, bombshell, grenade, bottle or other container
23 containing an explosive substance of over one-quarter
24 ounce for like purposes such as black powder bombs and
25 Molotov cocktails or artillery projectiles.

26 (ix) "Tool to defeat security mechanisms" means,
27 but is not limited to, handcuff or security restraint
28 key, tool designed to pick locks, or device or
29 instrument capable of unlocking handcuff or security
30 restraints, doors to cells, rooms, gates or other areas
31 of the penal institution.

32 (x) "Cutting tool" means, but is not limited to,
33 hacksaw blade, wirecutter, or device, instrument or
34 file capable of cutting through metal.

1 (xi) "Electronic contraband" means, but is not
2 limited to, any electronic, video recording device,
3 computer, or cellular communications equipment,
4 including, but not limited to, cellular telephones,
5 cellular telephone batteries, videotape recorders,
6 pagers, computers, and computer peripheral equipment
7 brought into or possessed in a penal institution
8 without the written authorization of the Chief
9 Administrative Officer.

10 (d) Bringing alcoholic liquor into a penal institution is a
11 Class 4 felony. Possessing alcoholic liquor in a penal
12 institution is a Class 4 felony.

13 (e) Bringing cannabis into a penal institution is a Class 3
14 felony. Possessing cannabis in a penal institution is a Class 3
15 felony.

16 (f) Bringing any amount of a controlled substance
17 classified in Schedules III, IV or V of Article II of the
18 Controlled Substance Act into a penal institution is a Class 2
19 felony. Possessing any amount of a controlled substance
20 classified in Schedule III, IV, or V of Article II of the
21 Controlled Substance Act in a penal institution is a Class 2
22 felony.

23 (g) Bringing any amount of a controlled substance
24 classified in Schedules I or II of Article II of the Controlled
25 Substance Act into a penal institution is a Class 1 felony.
26 Possessing any amount of a controlled substance classified in
27 Schedules I or II of Article II of the Controlled Substance Act
28 in a penal institution is a Class 1 felony.

29 (h) Bringing an item of contraband listed in paragraph (iv)
30 of subsection (c)(2) into a penal institution is a Class 1
31 felony. Possessing an item of contraband listed in paragraph
32 (iv) of subsection (c)(2) in a penal institution is a Class 1
33 felony.

34 (i) Bringing an item of contraband listed in paragraph (v),

1 (ix), (x), or (xi) of subsection (c)(2) into a penal
2 institution is a Class 1 felony. Possessing an item of
3 contraband listed in paragraph (v), (ix), (x), or (xi) of
4 subsection (c)(2) in a penal institution is a Class 1 felony.

5 (j) Bringing an item of contraband listed in paragraphs
6 (vi), (vii) or (viii) of subsection (c)(2) in a penal
7 institution is a Class X felony. Possessing an item of
8 contraband listed in paragraphs (vi), (vii), or (viii) of
9 subsection (c)(2) in a penal institution is a Class X felony.

10 (k) It shall be an affirmative defense to subsection (b)
11 hereof, that such possession was specifically authorized by
12 rule, regulation, or directive of the governing authority of
13 the penal institution or order issued pursuant thereto.

14 (l) It shall be an affirmative defense to subsection (a)(1)
15 and subsection (b) hereof that the person bringing into or
16 possessing contraband in a penal institution had been arrested,
17 and that that person possessed such contraband at the time of
18 his arrest, and that such contraband was brought into or
19 possessed in the penal institution by that person as a direct
20 and immediate result of his arrest.

21 (m) Items confiscated may be retained for use by the
22 Department of Corrections or disposed of as deemed appropriate
23 by the Chief Administrative Officer in accordance with
24 Department rules or disposed of as required by law.

25 (Source: P.A. 94-556, eff. 9-11-05.)

26 (720 ILCS 5/31A-1.2) (from Ch. 38, par. 31A-1.2)

27 Sec. 31A-1.2. Unauthorized bringing of contraband into a
28 penal institution by an employee; unauthorized possessing of
29 contraband in a penal institution by an employee; unauthorized
30 delivery of contraband in a penal institution by an employee.

31 (a) A person commits the offense of unauthorized bringing
32 of contraband into a penal institution by an employee when a
33 person who is an employee knowingly and without authority or

1 any person designated or authorized to grant such authority:

2 (1) brings or attempts to bring an item of contraband
3 listed in paragraphs (i) through (iv) of subsection (d)(4)
4 into a penal institution, or

5 (2) causes or permits another to bring an item of
6 contraband listed in paragraphs (i) through (iv) of
7 subsection (d)(4) into a penal institution.

8 (b) A person commits the offense of unauthorized possession
9 of contraband in a penal institution by an employee when a
10 person who is an employee knowingly and without authority of
11 any person designated or authorized to grant such authority
12 possesses contraband listed in paragraphs (i) through (iv) of
13 subsection (d)(4) in a penal institution, regardless of the
14 intent with which he possesses it.

15 (c) A person commits the offense of unauthorized delivery
16 of contraband in a penal institution by an employee when a
17 person who is an employee knowingly and without authority of
18 any person designated or authorized to grant such authority:

19 (1) delivers or possesses with intent to deliver an
20 item of contraband to any inmate of a penal institution, or

21 (2) conspires to deliver or solicits the delivery of an
22 item of contraband to any inmate of a penal institution, or

23 (3) causes or permits the delivery of an item of
24 contraband to any inmate of a penal institution, or

25 (4) permits another person to attempt to deliver an
26 item of contraband to any inmate of a penal institution.

27 (d) For purpose of this Section, the words and phrases
28 listed below shall be defined as follows:

29 (1) "Penal Institution" shall have the meaning
30 ascribed to it in subsection (c)(1) of Section 31A-1.1 of
31 this Code;

32 (2) "Employee" means any elected or appointed officer,
33 trustee or employee of a penal institution or of the
34 governing authority of the penal institution, or any person

1 who performs services for the penal institution pursuant to
2 contract with the penal institution or its governing
3 authority.

4 (3) "Deliver" or "delivery" means the actual,
5 constructive or attempted transfer of possession of an item
6 of contraband, with or without consideration, whether or
7 not there is an agency relationship;

8 (4) "Item of contraband" means any of the following:

9 (i) "Alcoholic liquor" as such term is defined in
10 Section 1-3.05 of the Liquor Control Act of 1934.

11 (ii) "Cannabis" as such term is defined in
12 subsection (a) of Section 3 of the Cannabis Control
13 Act.

14 (iii) "Controlled substance" as such term is
15 defined in the Illinois Controlled Substances Act.

16 (iii-a) "Methamphetamine" as such term is defined
17 in the Illinois Controlled Substances Act or the
18 Methamphetamine Control and Community Protection Act.

19 (iv) "Hypodermic syringe" or hypodermic needle, or
20 any instrument adapted for use of controlled
21 substances or cannabis by subcutaneous injection.

22 (v) "Weapon" means any knife, dagger, dirk, billy,
23 razor, stiletto, broken bottle, or other piece of glass
24 which could be used as a dangerous weapon. Such term
25 includes any of the devices or implements designated in
26 subsections (a)(1), (a)(3) and (a)(6) of Section 24-1
27 of this Act, or any other dangerous weapon or
28 instrument of like character.

29 (vi) "Firearm" means any device, by whatever name
30 known, which is designed to expel a projectile or
31 projectiles by the action of an explosion, expansion of
32 gas or escape of gas, including but not limited to:

33 (A) any pneumatic gun, spring gun, or B-B gun
34 which expels a single globular projectile not

1 exceeding .18 inch in diameter; or

2 (B) any device used exclusively for signaling
3 or safety and required or recommended by the United
4 States Coast Guard or the Interstate Commerce
5 Commission; or

6 (C) any device used exclusively for the firing
7 of stud cartridges, explosive rivets or industrial
8 ammunition; or

9 (D) any device which is powered by electrical
10 charging units, such as batteries, and which fires
11 one or several barbs attached to a length of wire
12 and which, upon hitting a human, can send out
13 current capable of disrupting the person's nervous
14 system in such a manner as to render him incapable
15 of normal functioning, commonly referred to as a
16 stun gun or taser.

17 (vii) "Firearm ammunition" means any
18 self-contained cartridge or shotgun shell, by whatever
19 name known, which is designed to be used or adaptable
20 to use in a firearm, including but not limited to:

21 (A) any ammunition exclusively designed for
22 use with a device used exclusively for signaling or
23 safety and required or recommended by the United
24 States Coast Guard or the Interstate Commerce
25 Commission; or

26 (B) any ammunition designed exclusively for
27 use with a stud or rivet driver or other similar
28 industrial ammunition.

29 (viii) "Explosive" means, but is not limited to,
30 bomb, bombshell, grenade, bottle or other container
31 containing an explosive substance of over one-quarter
32 ounce for like purposes such as black powder bombs and
33 Molotov cocktails or artillery projectiles.

34 (ix) "Tool to defeat security mechanisms" means,

1 but is not limited to, handcuff or security restraint
2 key, tool designed to pick locks, or device or
3 instrument capable of unlocking handcuff or security
4 restraints, doors to cells, rooms, gates or other areas
5 of the penal institution.

6 (x) "Cutting tool" means, but is not limited to,
7 hacksaw blade, wirecutter, or device, instrument or
8 file capable of cutting through metal.

9 (xi) "Electronic contraband" means, but is not
10 limited to, any electronic, video recording device,
11 computer, or cellular communications equipment,
12 including, but not limited to, cellular telephones,
13 cellular telephone batteries, videotape recorders,
14 pagers, computers, and computer peripheral equipment.

15 (e) A violation of paragraphs (a) or (b) of this Section
16 involving alcohol is a Class 4 felony. A violation of paragraph
17 (a) or (b) of this Section involving cannabis is a Class 2
18 felony. A violation of paragraph (a) or (b) involving any
19 amount of a controlled substance classified in Schedules III,
20 IV or V of Article II of the Illinois Controlled Substances Act
21 is a Class 1 felony. A violation of paragraph (a) or (b) of
22 this Section involving any amount of a controlled substance
23 classified in Schedules I or II of Article II of the Illinois
24 Controlled Substances Act is a Class X felony. A violation of
25 paragraph (a) or (b) involving an item of contraband listed in
26 paragraph (iv) of subsection (d)(4) is a Class X felony. A
27 violation of paragraph (a) or (b) involving an item of
28 contraband listed in paragraph (v) or (xi) of subsection (d)(4)
29 is a Class 1 felony. A violation of paragraph (a) or (b)
30 involving an item of contraband listed in paragraphs (vi),
31 (vii) or (viii) of subsection (d)(4) is a Class X felony.

32 (f) A violation of paragraph (c) of this Section involving
33 alcoholic liquor is a Class 3 felony. A violation of paragraph
34 (c) involving cannabis is a Class 1 felony. A violation of

1 paragraph (c) involving any amount of a controlled substance
2 classified in Schedules III, IV or V of Article II of the
3 Illinois Controlled Substances Act is a Class X felony. A
4 violation of paragraph (c) involving any amount of a controlled
5 substance classified in Schedules I or II of Article II of the
6 Illinois Controlled Substances Act is a Class X felony for
7 which the minimum term of imprisonment shall be 8 years. A
8 violation of paragraph (c) involving an item of contraband
9 listed in paragraph (iv) of subsection (d)(4) is a Class X
10 felony for which the minimum term of imprisonment shall be 8
11 years. A violation of paragraph (c) involving an item of
12 contraband listed in paragraph (v), (ix) or (x) of subsection
13 (d)(4) is a Class X felony for which the minimum term of
14 imprisonment shall be 10 years. A violation of paragraph (c)
15 involving an item of contraband listed in paragraphs (vi),
16 (vii) or (viii) of subsection (d)(4) is a Class X felony for
17 which the minimum term of imprisonment shall be 12 years.

18 (g) Items confiscated may be retained for use by the
19 Department of Corrections or disposed of as deemed appropriate
20 by the Chief Administrative Officer in accordance with
21 Department rules or disposed of as required by law.

22 (Source: P.A. 94-556, eff. 9-11-05.)".